IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8556 OF 2005

Nitin B. Sakhadeo (Joshi) ....Petitioner
V/s.
Shamrao H. Rabade & Ors. ....Respondents

Mr.Vineet B. Naik for the Petitioner.
Mr.P.D. Dalvi for Respondent No.1.
Mr.M.H. Solkar, AGP for State.

CORAM : R.M. SAVANT, J.
DATED : 5TH JUNE, 2007.

P.C. :

1. Rule. Rule with the consent of the parties made returnable forthwith and heard.

2. By this Petition filed under Article 227 of the Constitution of India, the Petitioner impugns the order dated 2.9.2005 passed in Misc. Civil Application No.94 of 2004, numbered as Exhibit "26-A". By the said order, delay condonation application filed by the Petitioner for condoning the delay in filing the Appeal has been rejected.

3. Such of the facts which are necessary to be cited are stated thus :-

. The Petitioner is the original Defendant in

R.C.S. No.952 of 1997. The suit was filed by Respondent No.1 claiming the declaration as easementary right of discharging drainage water and rain water in the suit property. The learned Civil Judge (J.D.), Kolhapur was pleased to decree the suit and hold that Respondent No.1 has a easementary right in the suit property and also granted a perpetual injunction in favour of Respondent No.1. The said decree was passed on 28.4.2003. The Petitioner filed an Appeal against the said decree on 5.4.2004 and the said Appeal was belated by 313 days. The Petitioner therefore filed Misc. Application No.94 of 2004 for condonation of delay which came to be rejected by an order dated 2.9.2005, which is the subject matter of the issue.

4. I have heard the learned counsel for the respective parties. Mr.V.B. Naik, the learned counsel appearing on behalf of the Petitioner drew my attention to the averments made in the said application in paragraphs 3, 4, 5 and 6. The sum and substance of the averments in the said paragraphs is that the Petitioner was in the hope of compromising the said matter, the talks between the parties were going on after the decree and the Petitioner had given a proposal of handing over 100 sq.ft. land out of the

suit property to Respondent No.1. The terms of the compromise were discussed between the parties however, after seeing the writing on the wall front, no compromise could be arrived at, the Petitioner belatedly applied for certified copy in September, 2003. Thereafter the Petitioner approached his advocate who advised him that since the period for Appeal is over, it would be better for the Petitioner to compromise the matter with Respondent No.1. Hence the Petitioner approached Respondent No.1 again but the compromise talks were invain. The Petitioner therefore has justified the delay on the said basis. It is contended by Mr.Naik that the Petitioner was not negligent but was labouring under a bona-fide impression that the matter would be compromised, that the Petitioner was pursuing the said course of action and therefore, there was a delay in filing the said Appeal.

5. On the other hand, it is contended by the counsel for contesting Respondent No.1 - Mr.Dalvi that the Appellate Court having exercised its discretion by not accepting the case of the Petitioner for condonation of delay, this Court should not exercise its extra-ordinary jurisdiction under Article 227 of the Constitution of India.

6. I have given my anxious consideration to the rival contentions. It is trite that in the matters of condonation of delay, a highly technical approach should be eschewed and an approach which furthers the cause of substantial justice should be adopted. No doubt, the Petitioner filed the Appeal belatedly after about 313 days of the decree, but the explanation/justification given by the Petitioner in the teeth of the facts of the present case,appears to be plausible. The Petitioner in terms, has stated in the application that he was ready to hand over the area of 100 sq.ft. to Respondent No.1. The reason given by the Petitioner deserves to be accepted.

7. However, the interest of justice would be served if the costs of Rs.5000/- are imposed on the Petitioner to be paid to Respondent No.1 and/or his advocate within a period of three weeks from date. Consequently the impugned order dated 2.9.2005 is set-aside. The delay of 313 days in filing the Appeal is condoned. The Appeal to be numbered only after the Petitioner produces the proof in evidence of payment of costs made to Respondent No.1. In case the costs are not paid to Respondent No.1 as directed above, the Petition to stand dismissed.

8. Rule is accordingly made absolute in the aforesaid terms.

(R.M. SAVANT, J)